Trends in Federal Tax Procedure

Frederick L. Pearce
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Since the consummation last summer of the decentralization of the activities of the Bureau of Internal Revenue, many practitioners in the field of federal taxation have been asking the question—What may be the next development? A direct answer to that question may not be discerned at the moment. However, an analysis of certain criticisms of the current tax procedure should disclose opportune points for improvement. Also, a review of some recent proposals and countersuggestions for changes in form and method may give a consensus on the desirable direction of the development.

A comprehensive program for revision of almost the entire federal tax procedure is proposed in an article by Roger John Traynor, of the School of Jurisprudence of the University of California, in the Columbia Law Review for December, 1938, captioned "Administrative and Judicial Procedure for Federal Income, Estate and Gift Taxes—A Criticism and a Proposal." This is of current significance because Mr. Traynor speaks from authoritative experience, having at times served with the Treasury Department as a technical adviser in tax matters, and because the Congressional committees have had but little time available for consideration of purely procedural problems since that proposal was initiated. It is reported that some such program may be presented as soon as Congress begins its study of the general question of tax procedure. Consequently, an examination of Professor Traynor's article, both with respect to criticism and proposal, may help foresee the trend.

CRITICISM OF CURRENT PROCEDURE

In the article by Professor Traynor the primary criticism of current procedure is directed to the delay in reaching a final conclusion on federal tax controversies. It is said that in many cases three years are spent in the Bureau, three years more if appealed to the Board of Tax Appeals, a further two years
in the cases carried to the circuit courts, and one additional year when considered by the Supreme Court; an over-all period of nine years from the time the return was filed. Admittedly there is a reduced number of controversies in each stage, and few go the whole route or even a major part of it, but the number of appeals is sufficient to warrant an acceleration of the tempo of the procedure.

Professor Traynor says that, of the petitions filed with the Board of Tax Appeals, about 70 per cent are settled administratively without trial, implying that there are many unnecessary appeals. It is asserted that the large number of docketed cases places an undue burden upon the Board and that the high proportion of settlements breaks up the calendar and delays the consideration of the other matters. In all fairness, it should be mentioned that the basic criticism is not of the Board itself, but is directed rather to possible shortcomings in the prior procedure which, in turn, cause so many appeals to the Board.

The article's further criticism shows the author's opinion of the causes and effects of delay. He points out that many taxpayers become insolvent while their cases are pending and that much revenue is lost. The guidance in the administration of the revenue laws, to be expected from authoritative decisions of the Board and the courts, seems on many issues rather unduly postponed. Much of the delay in the Board Professor Traynor attributes to the number of small matters appealed, some 40 per cent of the petitions stating sums of less than $2,000 in controversy.

The delay in the Bureau of Internal Revenue is asserted to be due to the elaborateness of the procedure, the repeated protests and reviews, with multiple reconsiderations. Much of this is attributed to the inability of the commissioner to secure a complete statement of all the pertinent facts and available evidence in the first presentation of a controversy. It is implied that in many instances it is only after the case has passed from the Bureau to the Board that the taxpayer will disclose all the facts and evidence, thus unduly hampering the administrative consideration.
In regard to the present court procedure, Professor Traynor considers the multiple jurisdiction in the district courts and the court of claims in suits upon refund claims an anachronism. It is said that there is no justification today for the infrequent suits against the collectors and, impliedly, none for the other refund suits. Such a variety of original jurisdictions makes uniform tax decisions initially impossible. Also the provision for appeals from both the Board and the district courts to eleven appellate tribunals is said to encourage conflicts and to preclude any finality of decision on litigated tax questions until the Supreme Court decides the issue. It is asserted that the present system of appellate review invites and multiplies litigation and, impliedly, aggravates the delay in the administrative consideration of other matters which must await the determination of questions that are in litigation.

Professor Traynor evidently believes that most of the defects he sees in the present situation may be remedied by a change in procedure which would eliminate repeated administrative reconsiderations. His evident objective is to design a process which would bring most of the controversies, particularly those involving questions of fact, to a conclusion in the early administrative stages. Such a process, he assumes, would leave the judicial agencies free to concentrate upon questions of law. Suggestions are also made for change in the judicial procedure with a view to insuring uniformity in tax decisions. Granting the desirability of these objectives, let us examine the remedies suggested.

THE TRAYNOR PLAN

Professor Traynor's proposal presents a comprehensive plan for revision of practically the entire present federal tax procedure. In detail, the proposal contemplates an examination of a tax return and a preliminary conference, as at present. If no settlement is reached, there would be a registered notice requiring a formal protest. If no protest is filed, the taxpayer would be thereafter precluded from going to the Board or to the courts. This protest would be required to contain
(a) all grounds, item by item, (b) all evidentiary and ultimate facts, (c) a list of documents, books, etc., and their whereabouts, and (d) the names and addresses of all witnesses, with a statement of their connection with the transactions involved. The filing of the protest would be followed by a conference in the field office, which would be the final consideration in the Bureau. Every effort would be made to dispose of the controversy or, if that proved impossible, to iron out all factual differences so that further consideration might be limited to questions of law.

The importance of the form of protest does not appear until the nature of the further proposed procedure is examined. In the deficiency notice from which the taxpayer could appeal to the Board, the commissioner would be required to include specific findings of fact on the matters involved. Before the Board, the commissioner would be limited to the issues and facts contained in his findings, and the taxpayer would be restricted to the grounds, documents, and facts stated in his protest. The Board's consideration would be confined to the issues so presented, and the taxpayer would carry the burden of showing that the conclusions and findings of fact of the commissioner were erroneous. The commissioner would be precluded from asserting any additional deficiency before the Board.

A further striking proposal should be mentioned. Because of the present loss of revenue, a bond or its equivalent would be required in every deficiency case carried to the Board of Tax Appeals. It is said that the requirement of a bond would expedite settlement in the administrative stage as well as insure the collection of the deficiency.

The stated purpose of these proposals is to require a full disclosure and consideration of all the facts and evidence before the Bureau, with a view to culminating at that stage most controversies and to eliminating settlements after the petition is filed with the Board. Professor Traynor concedes that this would require the presentation to the Bureau of a most comprehensive
protest, with as thorough a preparation of the case as is now given to trials before the Board. He assumes, however, that factual issues would be largely eliminated, that the number of appeals to the Board would be greatly reduced, and that the Board would be left to function generally on debatable questions of law.

The article also proposes that the original jurisdiction in tax refund matters be taken from the courts and concentrated in the Board of Tax Appeals. The procedure in regard to refunds would then be the same as in deficiency cases, the claim being required in the same comprehensive form as the prescribed protest to a deficiency. The commissioner would be required to make findings of fact in his notice rejecting a claim, and the presentation to the Board would be limited to the matters set out in the notice and the preceding claim.

With the consideration of income, estate, and gift taxes thus concentrated, it would be provided that, when a year (or return) had once been questioned either by a proposed deficiency or a refund claim and the matter closed at any stage in the procedure, no further refund or deficiency would be considered. In other words, all possible refund or deficiency issues would have to be presented in the first consideration of any year (or return) and the present right to pay a deficiency and later claim a refund would be eliminated.

Professor Traynor says also that a decentralized Board of Tax Appeals is made imperative by the current decentralization of the Bureau. He proposes that the nation be divided into five districts and the Board into five divisions of three members each, with separate headquarters for one division in each district. Hearings would be held at various places within the district before a single member, but the three members would consult when issuing a division decision, which without further review would be the decisions of the Board. The proposal is, in essence, to have five separate boards of tax appeals.

The article concedes that such decentralization of the Board would naturally result in some conflicts among the decisions of the separate divisions. Those conflicts, it is said, would not be harmful if they could be resolved easily and
expeditiously. To that end it is proposed that appeals from the Board should go to a single appellate tribunal to be located in Washington, D.C. This might be a newly created Court of Tax Appeals, or an existing court (with enlarged jurisdiction and personnel) such as the Court of Claims or the Circuit Court of Appeals for the District of Columbia. Consideration by the Supreme Court would be, as at present, by petition for certiorari from the single appellate court.

CRITICISM OF THE TRAYNOR PLAN.

The Traynor proposal represents a scholarly approach to an important and concededly difficult problem. Much of his criticism of the current situation may be justified and the desirability of improvement in procedure admitted. Also the objectives are generally discerned and agreed upon; but there appears to be no unanimity of opinion as to the efficacy of the specific proposals. The drafting of such a detailed plan, however, has this real value; it has stimulated discussion and counter proposals, which should lead ultimately to improvement in the procedure, benefiting both the taxpayers and the administrator. From that point of view, it is worth-while to consider some of the criticisms of the Traynor plan.

In weighing any proposal for change in procedure, one fundamental which must not be overlooked is that the collection of the income, estate, and gift taxes rests primarily upon what is called a "self-assessment" process. Recent studies have shown, for example, that over a period of years, about 85 per cent of all federal income-tax-collections, the largest single source of revenue, represents the sums voluntarily reported by the taxpayers in their original returns. Less than 15 per cent of such collections have resulted from the deficiency procedure. Hence, by far the major portion of the total internal revenue arises from the assessments voluntarily reported by the taxpayers themselves.

The necessity of maintaining taxpayer cooperation and good will is now generally recognized as essential to the effective working of the whole self-assessment process. The continuance of the large proportion of voluntary payments on the part
of the great body of tax-paying citizens, necessarily depends upon their confidence in a fair administrative procedure after the returns have been filed. To maintain that confidence requires a relatively simple, informal, and prompt administrative process in the consideration of both deficiency and refund cases. Any proposal which would increase the formal burden of taxpayers in the administrative stage tends to shake their group confidence and undermine the whole self-assessment process. Proposals for change in administrative procedure must be scrutinized in the light of these fundamentals.

The essence of the change proposed by Professor Traynor in the procedure within the Bureau is epitomized by the required content of the protest. This would have to be drafted with full preparation for a possible appeal to the Board, in effect requiring a complete and detailed pleading before the matter had been determined in the administrative stage. Indeed, in requiring the statement of evidentiary facts and the designation of books and witnesses, the protest would be much more exacting than the rules of the Board or of any common-law pleading.

Such a requirement would preclude informality, delay consideration, and undoubtedly increase the burden and cost of the administrative consideration of each proceeding. In the cases which were settled— and Professor Traynor's opinion is that a greater proportion than at present would be settled—the additional delay and cost entailed in the extended preparation of such a protest should have been unnecessary. In addition the taxpayer would have to be constantly alert to amend the protest to cover every development in the negotiations, since at his peril it would be necessary to state every possible issue and item of proof which he might desire later to urge before the Board. Such amending would obviously further disrupt and delay the administrative consideration.

The proposal apparently contemplates something like a complete trial in the Bureau, with the production of documents and witnesses. That would represent a step backward to the situation existing prior to 1924—the old committee
on appeals and review. It was shown then that taxpayers dislike and distrust trying a matter before a party who is both judge and adversary. The Board of Tax Appeals was created, in part at least, to correct that situation by providing trial before an independent tribunal. However, in the proposed procedure, if the matter were not settled, a second trial would follow in the Board, thus doubling the expense. On the other hand, if there were not to be a trial in the Bureau, then a detailed listing of documents and witnesses which were not produced would add to the cost and burden of a proceeding which would be little different from the present one. Certainly such a process would not be likely to increase taxpayer goodwill.

Of particular interest to the accountant is the fact that the proposed changes would tend to destroy the present informality of Bureau procedure, because of the suggested pleading and trial features. Most tax controversies necessarily involve the interpretation of figures; and an informal administrative process is admittedly better adapted to the settlement of issues of that character. Further, the aptitude of the accountant in the analysis and presentation of tax figures is generally recognized. A rigid formalization of the process might mean the destruction of some of the greatest services the accountant brings to tax administration.

Also, from the commissioner’s side, the proposed statement of issues and facts in the deficiency notice would become his basic pleading before the Board beyond which he could not go. The notice would have to be drafted by his attorney to insure a proper pleading; and fully to understand the issues and facts, his counsel would have to attend the Bureau conferences. Thus, also, the commissioner’s cost and burden would be increased and his determination delayed by the necessity for drafting an extensive and technical deficiency notice. Further, in all the matters which were settled administratively—assumed in the article to be the major portion—the additional cost and delay would have proved to be unnecessary.

Nor is there any assurance that the required formalization of the protest
and the notice would expedite the Board's consideration. A protest, drawn
months before a later appeal to the Board, would have to be interpreted as
a pleading in the light of later decisions. The notice might raise issues
and facts not fully set out in the protest. There might be endless bickering
as to what was to be considered or excluded, what was the effect of attempted
amendments, and many issues unrelated to the merits of the controversy. The
procedure might become a game, the antithesis of the modern tendency toward
simplified pleading. No one likes to lose an issue, valid on the merits, be-
cause of some slip or omission in its statement; yet that result would be cer-
tain to occur frequently.

The proposed addition of refund jurisdiction to the Board is to be com-
mended, but the complete removal from the district courts and the Court of
Claims seems of doubtful desirability. It is not the number of suits filed
which shows the value of this remedy. The fact that a taxpayer may, if he
chooses, pay his tax and later go to his local district court for a refund,
tends to maintain the group confidence essential to the efficient working of
the self-assessment process. The very existence of the right, although in-
frequently used, is the surest way of keeping a specialized tribunal from getting
too far away from the realities of the general law as opposed to purely tax
attitudes. Also, the fact that the alternative remedy exists permits of the more
ready settlement of deficiencies evidently due, without the necessity of combing
every refund possibility. Doubtful points can be passed over, pending clarify-
ing decisions. If the proceeding on a small deficiency were to be the "last
change," every doubtful item would have to be contested and appealed. The proposal
seems more likely to multiply rather than to reduce contests and litigation,
since the prohibition of any later claim would preclude many administrative settle-
ments, effected under the present procedure, in which doubtful items may be left
for later refund consideration.

It is by no means a certain criticism of the present form of procedure
that many settlements are made after the Board petition is filed. The deterrent
may not be a procedural one at all. Many cases arise, because of a change in court decision for example, too late in the statutory period to permit adequate consideration before the deficiency notice must issue. In such instances, the circumstances, irrespective of the form of procedure, afford no opportunity for settlement until after the appeal has been taken. For cases of that type there is no justification for deprecating post-appeal settlements.

It seems to be implied in Professor Traynor's proposal that administrative settlement would be prohibited after the appeal had been taken to the Board, since, if such settlements were frequent, much of the proposed prior procedure might be stultified. Nevertheless, as previously pointed out, there is no assurance that the number of appeals would be reduced because of the proposed change in procedure. Hence, if there were to be no post-appeal settlements, there might be a rapid accumulation of contests in the Board, a result exactly opposite to that asserted in favor of the proposal. Upon analysis it seems clear that it is not the form of the administrative procedure which precludes appeals and produces settlements. The present informal procedure can produce as many settlements as a more formalized administrative process, where there is the attitude and the authority to effect the same kind of settlements before as well as after the petition has been filed.

Professor Traynor's proposal to divide the Board into five divisions issuing independent decisions would seem most certain to result in an increased conflict in decisions. It is reported that the Board decided about 2,000 cases a year while the circuit courts pass upon only 300 to 400. Hence the present provision for review by the full Board makes for consistency in the largest group of tax decisions. It would seem a step backward to sacrifice that for a slight acceleration in division decisions. Further, the present form of the Board with its system of field hearings gives the advantages of both local consideration and uniformity of decisions.

The proposal to require a bond on every appeal to the Board arises from the criticism that often a deficiency is not collectible at the conclusion of
a Board proceeding. The study does not show, however, what proportion of these sums was also not collectible when the deficiency notice issued; only the difference should be charged to the time consumed before the Board. The remedy seems out of all proportion to the malady. Large bonds are expensive and difficult to obtain; in smaller cases a bond, double the amount of the tax, would be a real deterrent which might force a settlement otherwise not justified. Since the Board is said to sustain about 30 per cent of the deficiencies proposed, the cost of bonds over six times the average tax found to be due would be hard to explain to the taxpayers in their relation to the Government. Since the securing of a bond is often as onerous as payment, the requirement would destroy one essential purpose in founding the Board, which was to give the right to a re-determination of a tax deficiency before the burden of payment is imposed. The existing procedure was designed, purposely and wisely, to avoid that very situation.

The proposal of a single appellate tribunal for all tax controversies appears to proceed upon the assumption that a conflict in circuit court decisions on tax questions is in all respects undesirable. Certain it is, however, that the consideration of the same question by a number of courts will develop all the phases of the problem; the final resolution of conflicting decisions is more apt to reach the right answer. The presence of tribunals with equal jurisdiction discourages a hasty decision and results in conflicts only when there is a reasonable doubt as to another's conclusion. The delay resulting from conflicts may be worth the ultimate assurance of the right answer.

SOME COUNTER-PROPOSALS

For the criticism that the existing court procedure on appeal from the Board of Tax Appeals is an inverted pyramid, imposing eleven masters, there is something to be said. The solution may lie in the provision of a single court to hear those appeals, but many believe such a court should not consist solely of specialized tax judges. One counter-suggestion has been that the majority of such a court should be comprised of justices who are currently passing upon questions of general
Circuit court judges might be assigned to the Court of Tax Appeals for limited periods of service such as a single term of court. To give that court continuity, a minority of the bench could serve permanently in that court. Such a court should make for consistency in the review of Board decisions, give the Board one master, so to speak, and at the same time provide for a leavening of technical tax decisions with the experience of general law.

It has also been suggested, to meet the criticism of the current situation, that attention should first be concentrated on the accomplishment of settlements in the administrative stages. That seems to be not so much a question of the form of procedure as of the revision of attitudes and the extension of authority to settle, which are within the powers of the present administrative statutes. The development of reciprocal cooperation between taxpayers and administrator toward the ready ascertainment of all the facts and the tax reasonably due; realistic settlements under the law with an admixture of common sense; the avoidance of controversy merely because of an untried issue, would all go far to reduce, if not to eliminate, the present volume of tax appeals and litigation.

The Board of Tax Appeals has done, and continues to do, one of the most commendable jobs of any administrative tribunal in our whole system of Government. The Board's procedure has proved generally satisfactory to practically all persons who have appeared before it and who are familiar with its processes. There appears to be no general demand for a revision of the Board's setup or procedure.

As a further proposal, some improvement in the existing procedure for review of decisions of the Board might be considered. The suggestion of an appellate court composed of judges predominantly familiar with the current developments of the general law and not too narrowly focused upon the taxing statutes, who would implement the tax law as a part of the whole body of the law, may be the desirable solution.
The accounting profession should be vitally concerned with at least the first objective: the possible improvement in the administrative stages of the processes for settlement of tax controversies, without an impeding formalization of the procedure.
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were not produced would add to the cost and burden of a proceeding which would
be little different from the present one. Certainly such a process would not
be likely to increase taxpayer goodwill.

Of particular interest to the accountant is the fact that the proposed
changes would tend to destroy the present informality of Bureau procedure;
because of the suggested pleading and trial features. Next tax controversies
necessarily involve the interpretation of figures; and an informal administrati-
tion process is admittedly better adapted to the settlement of issues of
that character. Further, the attitude of the accountant in the analysis and
presentation of tax figures is generally recognized. A rigid formalization of
the process might mean the destruction of some of the greatest benefits the ac-
countant brings to tax administration.

Also, from the commissioner's side, the proposed statement of issues and
facts in the deficiency notice would become his basic pleading before the Board
beyond which he could not go. The notice would have to be drafted by his attor-
ney to insure a proper pleading; and fully to understand the issues and facts,
his counsel would have to attend the Bureau conferences. Thus, also, the commis-
sioner's cost and burden would be increased and his determination delayed by the
necessity for drafting an extensive and technical deficiency notice. Further,
in all the matters which were settled administratively—assumed in the article
to be the major portion—the additional cost and delay would have proved to be
unnecessary.

Nor is there any assurance that the required formalization of the protest
and the notice would expedite the Board's consideration. A protest, drawn months before a later appeal to the Board, would have to be interpreted as a pleading in the light of later decisions. The notice might raise issues and facts not fully set out in the protest. There might be endless bickering as to what was to be considered or excluded, what was the effect of attempted amendments, and many issues unrelated to the merits of the controversy. The procedure might become a game, the antithesis of the modern tendency toward simplified pleading. No one likes to lose an issue, valid on the merits, because of some slip or omission in its statement; yet that result would be certain to occur frequently.

The proposed addition of refund jurisdiction to the Board is to be commended, but the complete removal from the district courts and the Court of Claims seems of doubtful desirability. It is not the number of suits filed which shows the value of this remedy. The fact that a taxpayer may, if he chooses, pay his tax and later go to his local district court for a refund, tends to maintain the group confidence essential to the efficient working of the self-assessment process. The very existence of the right, although infrequently used, is the surest way of keeping a specialized tribunal from getting too far away from the realities of the general law as opposed to purely tax attitudes. Also, the fact that the alternative remedy exists permits of the more ready settlement of deficiencies evidently due, without the necessity of combing every refund possibility. Doubtful points can be passed over, pending clarifying decisions. If the proceeding on a small deficiency were to be the "last chance," every doubtful item would have to be contested and appealed. The proposal seems more likely to multiply rather than to reduce contests and litigation, since the prohibition of any later claim would preclude many administrative settlements, effected under the present procedure, in which doubtful items may be left for later refund consideration.

It is by no means a certain criticism of the present form of procedure that many settlements are made after the Board petition is filed. The deterrent
may not be a procedural one at all. Many cases arise, because of a change in court decision for example, too late in the statutory period to permit adequate consideration before the deficiency notice must issue. In such instances, the circumstances, irrespective of the form of procedure, afford no opportunity for settlement until after the appeal has been taken. For cases of that type there is no justification for deprecating post-appeal settlements.

It seems to be implied in Professor Traynor's proposal that administrative settlement would be prohibited after the appeal had been taken to the Board, since, if such settlements were frequent, much of the proposed prior procedure might be stultified. Nevertheless, as previously pointed out, there is no assurance that the number of appeals would be reduced because of the proposed change in procedure. Hence, if there were to be no post-appeal settlements, there might be a rapid accumulation of contests in the Board, a result exactly opposite to that asserted in favor of the proposal. Upon analysis it seems clear that it is not the form of the administrative procedure which precludes appeals and produces settlements. The present informal procedure can produce as many settlements as a more formalized administrative process, where there is the attitude and the authority to effect the same kind of settlements before as well as after the petition has been filed.

Professor Traynor's proposal to divide the Board into five divisions issuing independent decisions would seem most certain to result in an increased conflict in decisions. It is reported that the Board decided about 2,000 cases a year while the circuit courts pass upon only 300 to 400. Hence the present provision for review by the full Board makes for consistency in the largest group of tax decisions. It would seem a step backward to sacrifice that for a slight acceleration in division decisions. Further, the present form of the Board with its system of field hearings gives the advantages of both local consideration and uniformity of decisions.

The proposal to require a bond on every appeal to the Board arises from the criticism that often a deficiency is not collectible at the conclusion of
a Board proceeding. The study does not show, however, what proportion of these sums was also not collectible when the deficiency notice issued; only the difference should be charged to the time consumed before the Board. The remedy seems out of all proportion to the malady. Large bonds are expensive and difficult to obtain; in smaller cases a bond, double the amount of the tax, would be a real deterrent which might force a settlement otherwise not justified. Since the Board is said to sustain about 30 per cent of the deficiencies proposed, the cost of bonds over six times the average tax found to be due would be hard to explain to the taxpayers in their relation to the Government. Since the securing of a bond is often as onerous as payment, the requirement would destroy one essential purpose in founding the Board, which was to give the right to a redetermination of a tax deficiency before the burden of payment is imposed. The existing procedure was designed, purposely and wisely, to avoid that very situation.

The proposal of a single appellate tribunal for all tax controversies appears to proceed upon the assumption that a conflict in circuit court decisions on tax questions is in all respects undesirable. Certain it is, however, that the consideration of the same question by a number of courts will develop all the phases of the problem; the final resolution of conflicting decisions is more apt to reach the right answer. The presence of tribunals with equal jurisdiction discourages a hasty decision and results in conflicts only when there is a reasonable doubt as to another's conclusion. The delay resulting from conflicts may be worth the ultimate assurance of the right answer.

SOME COUNTER-PROPOSALS

For the criticism that the existing court procedure on appeal from the Board of Tax Appeals is an inverted pyramid, imposing eleven masters, there is something to be said. The solution may lie in the provision of a single court to hear those appeals, but many believe such a court should not consist solely of specialized tax judges. One counter-suggestion has been that the majority of such a court should be comprised of justices who are currently passing upon questions of general
Circuit court judges might be assigned to the Court of Tax Appeals for limited periods of service such as a single term of court. To give that court continuity, a minority of the bench could serve permanently in that court. Such a court should make for consistency in the review of Board decisions, give the Board one master, so to speak, and at the same time provide for a leavening of technical tax decisions with the experience of general law.

It has also been suggested, to meet the criticism of the current situation, that attention should first be concentrated on the accomplishment of settlements in the administrative stages. That seems to be not so much a question of the form of procedure as of the revision of attitudes and the extension of authority to settle, which are within the powers of the present administrative statutes. The development of reciprocal cooperation between taxpayers and administrator toward the ready ascertainment of all the facts and the tax reasonably due; realistic settlements under the law with an admixture of common sense; the avoidance of controversy merely because of an untried issue, would all go far to reduce, if not to eliminate, the present volume of tax appeals and litigation.

The Board of Tax Appeals has done, and continues to do, one of the most commendable jobs of any administrative tribunal in our whole system of government. The Board’s procedure has proved generally satisfactory to practically all persons who have appeared before it and who are familiar with its processes. There appears to be no general demand for a revision of the Board’s setup or procedure.

As a further proposal, some improvement in the existing procedure for review of decisions of the Board might be considered. The suggestion of an appellate court composed of judges predominantly familiar with the current developments of the general law and not too narrowly focused upon the taxing statutes, who would implement the tax law as a part of the whole body of the law, may be the desirable solution.
The accounting profession should be vitally concerned with at least the first objective: the possible improvement in the administrative stages of the processes for settlement of tax controversies, without an impeding formalization of the procedure.